



Winston H. Hickox  
Agency Secretary

# Air Resources Board

Alan C. Lloyd, Ph.D.  
Chairman

1001 I Street • P.O. Box 2815 • Sacramento, California 95812 • [www.arb.ca.gov](http://www.arb.ca.gov)



Gray Davis  
Governor

January 14, 2003

Dear Light-Duty Vehicle Manufacturers:

## **Application of Early Introduction Multipliers to Zero Emission Vehicles – Rescission of November 21, 2002 Letter**

This letter is to advise you that I am rescinding the November 21, 2002, letter I transmitted to you regarding the issue of a “sell-by date” by which a 2002 model-year zero emission vehicle (ZEV) would need to be placed in service in order to qualify for the 4.0 multiplier under California Code of Regulations, title 13, section 1962(d)(3). On December 24, 2002, a Fresno County Superior Court judge issued a Temporary Restraining Order (TRO) barring enforcement of the March 31, 2003 deadline for placement in service as established by the November 21, 2002 letter. DaimlerChrysler Corporation and General Motors Corporation applied for the TRO based on their allegation that my November 21, 2002 letter constituted an amendment to section 1962(d)(3) that needed to be adopted in accordance with rulemaking procedures in the California Administrative Procedure Act.

The November 21, 2002 letter was not meant to be construed as an amendment to section 1962(d)(3). Rather, it was meant only to respond to inquiries about the intentions of the Air Resources Board (ARB) with respect to any future rulemaking and about how ARB would exercise its enforcement discretion in the hypothetical event that the federal preliminary injunction regarding the 2001 amendments is dissolved. In any event, by transmittal of this letter I am rescinding the November 21, 2002 letter and informing you that the ARB is addressing the issue of a “sell-by date” for the placement in service under section 1962(d)(3) as part of the rulemaking process for recently announced amendments to the ZEV regulation. As you are probably aware, on January 10, 2003 the ARB published a notice for a February 27, 2003 hearing to consider a number of amendments to the ZEV regulation. That notice includes a proposed amendment addressing the issue of a “sell-by date” for placement in service of a 2002 model-year ZEV in order to qualify for the 4.0 early introduction multiplier. We encourage all interested parties to participate in the public comment process for these amendments.

Although not necessary, rescission of the November 21, 2002 letter is appropriate in light of the TRO and the newly proposed amendments. The ARB will not attempt to enforce or otherwise give effect to the November 21, 2002 letter and the letter should be considered to have no force or effect. Pending completion of the new rulemaking, the existing version of section 1962(d)(3) speaks for itself. The ARB will offer no

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interpretation of the provision outside of the formal rulemaking process, any litigation or other administrative proceedings. As stated in my November 21, 2002 letter, the ARB is not enforcing the 2001 amendments due to the existence of the federal preliminary injunction. This letter should not be construed as setting forth any interpretation of 13 C.C.R. § 1962(d)(3) or any intention of ARB regarding enforcement of the provision.

If you have any questions or if I can be of assistance regarding this issue, please call me at (916) 445-4383, or call Mr. Jack Kitowski, Chief, On-Road Controls Branch, at (916) 445-6102.

Sincerely,

/s/

Michael P. Kenny  
Executive Officer

cc: Mr. Jack Kitowski  
Mobile Source Control Division